they passed this Act? If that assumption be granted, and I feel sure that it must be, then it seems to follow that the local Courts would be wrong in refusing to grant relief under the Act unless the parties before them can be shown to have "resided together" in what can properly be described as a matrimonial home. If the parties have lived together in the same place as husband and wife, why should they not be regarded as having "resided together" there even though they have lived in hotels, rest houses, boarding houses, other people's houses or even in different houses? Provided that they have lived a normal married life together, so far as circumstances permitted, and in the same place, and for a reasonable period of time, it seems to me that they should be held to have "resided together" at that place as husband and wife, and so to have satisfied the test which the Act applies.

Now in this particular case the petitioner appears to have done all he could for his wife on her arrival at Singapore in February, 1939. The circumstances of his employment prevented him from taking her to live with him at the Seamen's Institute, so first he took lodgings for her, and then a small house for her and the adopted daughter when the latter arrived. He gave her a monthly sum by way of maintenance and paid the rent for her. He appears to have visited her quite regularly on the rare occasions when he was off duty, and the learned Chief Justice has found, as a fact, that the parties lived a normal married life during that period February, 1939, to February, 1940.

In other words the parties lived together as husband and wife at Singapore, so far as circumstances allowed, for a period of approximately one year.

On those facts I do not think that any one would object to the local Court holding that they "resided together" at Singapore within the meaning of this *proviso* (c) during that period if only the Courts are entitled to give a wide and benevolent construction to that phrase. In my opinion, and for the reasons which I have already given, the Courts are not only entitled, but bound, to adopt that kind of construction; and I therefore concur with the learned President in holding that the decree of the 6th of May, 1941, should be set aside, and that the petitioner should be granted a *decree nisi* in its place.

Perhaps I should say a word or two about the English cases in which the expressions "reside" or "residence" have been considered and which were brought to our notice by the industry of learned counsel. As the learned Chief Justice remarked in his judgment, a word "must be construed in accordance with the object and intent of the Act in which it occurs." For that reason I do not consider English cases on the meaning of the word "reside" in connection with pauper settlement, or qualifications of Municipal and Parliamentary electors, really helpful in the construction of divorce legislation. On the other hand I have found the cases cited to us on s. 3, sub-s. 1 of the Indian Divorce Act, 1869, where the phrase "last resided together" appears to have been used for the first time, distinctly helpful; and I am glad to see that the Courts in India, almost without exception, appear to have given a wide and benevolent construction to that phrase. That is particularly so in the cases of *Wright v. Wright*[3], *Murphy v. Murphy*[9], and *Ritchson v. Ritchson*[4].

Appeal allowed.

Solicitors for appellant:—*Drew & Napier.*
Solicitors for respondent:—*A. J. Braga.*
Solicitors for co-respondent:—*A. J. Braga.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J. (S.S.), AITKEN, Ag. J.A. & MANNING, J.

July 21, 1941.

IN RE S. FUNG, A SOLICITOR.

[SINGAPORE ORIGINATING SUMMONS No. 99 of 1940]

Advocates and Solicitors Ordinance (Cap. 62) Rules of etiquette—What amounts to professional misconduct of a solicitor.

If a solicitor does not keep his client's money intact and if he uses some of it for purposes which do not concern the client then there is a misappropriation at least for a time of at least part of the client's money even though later on the full amount due to the client is paid to him. This amounts to professional misconduct.

The Rules regulating the practice and etiquette of the Singapore Bar which have been made under S. 31 sub-s. 1 (a) of the Advocates and Solicitors Ordinance have the force of law. Those Rules require a practising Advocate and Solicitor to keep a client's moneys in a separate account with a Bank. A breach of this Rule amounts to improper conduct or practice on the part of the Advocate and Solicitor and will be punished as such.

Cases referred to:—

(1) *In re Sparks* 17 C.B. 727.
(2) *In re a Solicitor* 11 T.L.R. 168.
(3) *Allinson v. General Council of Medical Education and Registration* (1894) 1 Q.B. 450.

(4) *In re a Solicitor* Law Society's Gazette, September 1940.

TRIAL.

E. R. Koek for Disciplinary Committee.

Philip Hoalim for respondent.

The judgment of the Court consisting of McElwaine, C.J., Aitken, Ag. J.A., and Manning, J. was delivered by the Chief Justice and the facts and argument sufficiently appear therein.

McElwaine, C.J.—This is an application made on behalf of a Disciplinary Committee calling upon the Respondent, an Advocate and Solicitor of the Supreme Court, to show cause why he should not be struck off the Rolls, suspended from practice or otherwise dealt with.

The facts of the case are simple. The Respondent did not keep a separate client's account with a Bank as required by the Rules regulating the Practice and Etiquette of the Singapore Bar. These rules were made under Section 31 (1) (a) of the Advocates and Solicitors Ordinance and have the force of law.

On 3rd April 1940 the Respondent received a cheque for $1,960 on behalf of a client, the money representing a legacy to which the client was entitled.

On the same day the Respondent paid this cheque into his own Bank account.

Immediately before this cheque was paid in this account appears to have been in credit to the extent of $12.72. On the same day after the cheque was paid in the account was debited with three cheques drawn by the Respondent for a total of $550. Whether these cheques were actually drawn before or on the 3rd of April is not material. If they were drawn before the 3rd, the account was really overdrawn to the extent of $527.28 when the cheque for $1,960 was paid in, so in either case the three cheques were paid out of this $1,960. On 4th and 5th other cheques were paid out of the account, and on the latter day $500 was deposited by the Respondent. At the close of business on the 5th the account was in credit to the extent of $1,527.02.

At about 2.30 p.m. (after banking hours) on the 5th the Respondent gave his client a cheque for $1,700. The balance of $260 he retained against an untaxed Bill of Costs. The Respondent explained to his client that if the bill of costs was taxed at less than $260 he would pay the client the balance.

Although it was after banking hours the client managed to present the cheque, but it was returned by the Bank as there were not sufficient funds to meet it.

On the 6th a cheque for $50 was paid out of the account leaving a credit balance of $1,477.02. The same day the cheque for $1,700 was again presented and returned. The Bank ledger entries here are peculiar. The account is debited with $1,700 shewing a debit balance of $222.98. The next entry is "Paid in $350", shewing a credit balance of $127.02, and the following entry is a credit of this $1,700 cheque returned and a credit balance of $1,827.02 was shewn.

We were informed by Mr. Hoalim, who appeared for the Respondent, that this deposit of $350, which was shewn in the Bank book as one item, was in reality a cash deposit of $200 and a cheque deposit of $150 and that the reason why the cheque for $1,700 was not honoured on the 6th, the day on which the Respondent expected it to be presented, was that the cheque for $150 which he expected to be cleared at once was not so cleared.

The cheque for $1,700 was again presented on the 9th when it was paid, leaving a credit balance of $89.02.

Now it is quite clear that the $1,960 cheque was used to meet payments which did not concern the client, and if this cheque for $1,700 had been given on the 3rd after the first of the three cheques to which I have referred had been met, there would not have been sufficient funds to meet it. Moreover, at no time till the 8th when the cheque for $150 had been cleared and its value made available to the Respondent, were there sufficient funds to the credit of the Respondent to meet the $1,700 cheque. There was therefore misappropriation of the client's money for a few days.

But this is not all. The money received by the Respondent for his client was not $1,700 but $1,960, and at no time after the first cheque for $300 was debited on the 3rd was there a credit balance of $1,960 not even on the 8th or 9th.

If the Respondent thought he had some kind of lien on the $260 for costs, he should at least have kept this sum intact and at all times available until his claim was determined.

We think it quite clear that the Respondent did not keep his client's money intact, and it is equally clear that he used some of it for purposes which did not concern his client. Thus there was misappropriation for a time of part of the client's money, and this in our opinion amounted to professional misconduct.

Mr. Hoalim, on behalf of the Respondent, referred us to the usual old cases: *In re Sparks*[1], in which the Court was not satisfied that there had been any specific misappropriation of the client's money, though the solicitor admitted he had discounted bills paid to him on account of his client and had applied the proceeds to his own use.

In *in re a Solicitor*[2] the Court thought there was only delay in paying the money recovered, as the Committee of the Law Society had not expressly found that the Solicitor had retained money to his own use. It seems to us that these cases would probably not be followed to-day in England, and afford little or no guidance to Courts in Malaya which have to decide whether a Solicitor's transactions with his client's money amount to misappropriation.

We are also of opinion that, in construing such a provision of the Advocates and Solicitors Ordinance as Section 25 (2) (b) which speaks of grossly improper conduct in the discharge of professional duty, weight should be given to the opinion of solicitors of good repute and competency. In *Allinson v. General Council of Medical Education and Registration*[3] Lord Esher M.R., Lopes, L.J. and Davey, L.J. agreed to the following proposition: "If it is shewn that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council to say that he has been guilty of infamous conduct in a professional respect."

Unlike the General Medical Council, a Disciplinary Committee cannot strike off or suspend but its opinion as to what is and what is not professional misconduct on the part of an advocate and solicitor is entitled to great weight. Apart from the opinion of the Disciplinary Committee in this case that the Respondent's conduct constitutes cause for disciplinary action, the Singapore Bar Committee in making the Rules regulating the Practice and Etiquette of the Singapore Bar has indicated its disapproval of the use by a solicitor of his client's money by requiring a separate clients' account to be kept with a Bank and prohibiting the drawing of money from this account except for payment to or on behalf of the client, with certain specified exceptions none of which applies in this case.

Mr. Koek referred to a decision of the King's Bench Division *In re a Solicitor*[4]. In varying an order of the Disciplinary Committee Humphreys, J. in delivering the judgment of the Court said that "the Solicitor exchanged the cheques of Mr. F. out of the clients' account of his firm, which he knew perfectly well must not be touched for such a purpose by him or anybody else, and he continued to do it. As from August of 1938 there was, at most times, not necessarily always, a very substantial deficit caused in the clients' account of the firm by these practices." Later on he said "I think it may be said with truth that not only had no money actually passed into the pocket of the Respondent, but that there was no evidence which would justify any allegation, if such had been made, that it was the Respondent's desire that any money should pass to him as a result of these transactions."

This last passage which I have quoted is very important. It indicates that the Solicitor in question derived no personal monetary advantage from his irregularities. Nevertheless the irregularities were regarded as such grave professional misconduct that the solicitor was suspended for five years.

It has already been mentioned that the Respondent did not keep a clients' account. This appears to us to be a grave breach of Rules which have the force of law, and we consider that the breach of these Rules requiring separate clients' account to be kept amounts to improper conduct or practice on the part of the Respondent. We have already expressed an opinion that the Respondent's transactions with his client's money did amount to a misappropriation thereof.

Mr. Koek did not desire to exaggerate the Respondent's deliquencies, but pointed out that the highest standard of rectitude is required of a solicitor, especially in dealing with the money of his clients. We agree that without this high standard the profession cannot enjoy the confidence of the public which it serves.

The Respondent, we were told, has not up to date taken out his practising certificate for this year. We understand this was on account of these proceedings, but the jurisdiction of the Court to punish an advocate and solicitor does not depend on the existence of a practising certificate.

The hearing of this application has been delayed for a considerable time, partly due to the illness of the Respondent and partly due to difficulties in forming the Court. Taking into consideration everything which can be urged on behalf of the Respondent, such as the absence of fraud or deceit on his part, the fact that the cheque for $1,700 was eventually met and after only a short delay, we feel nevertheless that the most lenient sentence we can properly award is that the Respondent be suspended from practice for a period of nine months from the 1st of July 1941.

Respondent suspended.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.